
Appeal Decision

Site visit made on 15 October 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 2 December 2020

Appeal Ref: APP/G5750/C/19/3243167

19 Dames Road, Forest Gate, London E7 0DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mawahidul Mowla Khan against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice is dated 15 November 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use to four self-contained flats.
 - The requirements of the notice are: 1. Cease the use of the property as self-contained flats. 2. Remove from the property all but one kitchen, any internal dividing doorways and internal partitioning that solely facilitates the use as self-contained flats, plus all duplicate doorbells, duplicate signage and duplicate outside waste bins. 3. Remove from the property all but one supply of electricity, gas and water. 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

The appeal on ground (a) and the deemed planning application

Main Issues

2. The main issues are the effect of the development on:
 - The provision of family accommodation in the area;
 - The living conditions of existing and future occupiers, with particular regard to the provision of living space and accessibility;
 - Living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

Loss of family housing

3. The Council's evidence suggests that the appeal site was previously a single dwelling. Policy H4 of the Newham Local Plan (LP) sets out strategies for the protection and re-shaping of the existing housing stock in the area. It specifically protects family housing units of three bedrooms and above, and explicitly supports the deconversions of flats and HMOs back to family dwellings. Amongst other things, LP Policy H1 seeks to achieve a significant increase in family housing to replace that lost to conversion. I do not have any indication of the previous layout of No 19, but from the overall size of the accommodation over two floors, it is apparent that the building would have offered an adequate family dwelling.
4. Whilst recognising these policy objectives, the appellant argues that they should not preclude good quality flat conversions in sustainable and accessible locations. He states that there is a need in Newham for small one or two bed dwellings rather than large accommodation, and that the appeal scheme helps meet the chronic housing needs in the area.
5. The LP was adopted in 2018 and should therefore be taken as up to date and based on recent evidence. LP Policies H1 and H4 are accompanied by lengthy justifications giving detailed reasons for their strategies on housing delivery. The Council's evidence shows that the greatest housing need in Newham is for three bedroom homes. By contrast, the appellant offers no detailed or quantified evidence to support his position on housing need in the area, or to dispute the Council's evidence. I therefore see little reason to depart from the local policy aims.
6. The appellant states that the new flats provide accommodation for local people on the basis of rolling one year tenancies. On the first point, he does not define the term 'local' and offers little evidence to support this claim. With regard to tenancy, it is clear from paragraph 4.2 under LP Policy H1 that the Council want to encourage people to stay in the area, reducing churn and generating a resident population who have a strong stake in the borough's future. It is not clear how the offer of one year rolling tenancies would be commensurate with the Council's aim.
7. The appellant goes on to refer to break ins and burglaries at No 19 when it was a large house. He states that it previously attracted squatters and vandalism, and was unsafe to live in. However, he offers no documentary evidence of these unfortunate circumstances, for example, crime reference numbers from the police. He also refers to a fatal stabbing of a teenager nearby. Nevertheless, it is unclear from this incident why No 19 should be inherently unsafe to be occupied as a single dwelling, as opposed to the current arrangement of four flats.
8. With regard to the tenants, the appellant argues that they would be made homeless were the enforcement notice to be upheld, and that it would be extremely difficult for them to find alternative accommodation. Although the tenants will be placed in the position of having to leave their dwellings, the responsibility for this situation falls to the appellant, as he did not secure the necessary planning permission before letting out the flats. No explanation is given as to why it should be very difficult for them to find alternative accommodation, and there is little information for me to make any meaningful assessment of why this should be so.

9. The development represents the loss of a family dwellinghouse, a form of housing that the Council seek to protect through their strategic policies. In the absence of any convincing justification to set these policies aside, I conclude that the development has resulted in the loss of a family-sized unit, which unacceptably harms the provision of family accommodation in the surrounding area, contrary to LP Policies H1 and H4. Further conflict arises with Policy 3.8 of the London Plan, insofar as it identifies the provision of family housing as a strategic priority, and the National Planning Policy Framework (NPPF), which requires planning policies to reflect the housing need in local communities.
10. The development makes use of previously developed land and is well located to encourage walking, cycling, and the use of public transport. However, these benefits do not outweigh the policy conflict I have identified.

Living conditions - existing and future occupiers

11. The Council have assessed the new accommodation against the minimum requirements set out in the 'Technical Housing Standards – Nationally Described Space Standard' document (NDSS, March 2015, Department for Communities and Local Government). The assessment is made on the basis that Flats A, B and D provide two bed three person accommodation, with Flat C providing one bedroom two person accommodation. The appellant contends that three of the four units exceed the minimum standard for a studio flat, but this does not seem to be the basis on which they are occupied, and so this circumstance carries little weight.
12. The Council conclude that all the flats fall below the space standards and fail to offer lifetime accommodation. All but one lack outdoor space, and although I saw that the rear ground floor flat (Flat A on the Council's diagram) had access to an external area, this was of limited size and quality. No policy-compliant facilities are made for cycle storage, and accessibility to the upper two flats is restricted by the narrow, windy staircase.
13. The appellant accepts that, overall, the scheme does not comply with the NDSS requirements. He has therefore submitted an alternative scheme which would reconfigure the building from four flats to two. However, where new drawings are presented at the appeal stage, there is no mechanism for incorporating them into the deemed planning application based on the development as built and alleged. The proposed scheme is materially different to the existing, and so cannot reasonably be regarded as part of the scheme that constitutes the breach of planning control. Moreover, it would not achieve the aim of the notice to return the site to its condition prior to the breach.
14. Even if the alternative scheme satisfied the Council's concerns regarding space standards and the other matters relating to living conditions, the policy conflict relating to the loss of family housing would remain to be resolved. It is open to the appellant to submit a planning application for the revised scheme, but for the reasons I have given, I can give it minimal weight in relation to the appeal before me.
15. I thus conclude that the development unacceptably fails to provide satisfactory living conditions for existing or future occupants. It therefore conflicts with LP Policy SP3, insofar as it requires high quality accommodation for living, London Plan Policy 7.1, insofar as it seeks to enable people to lead healthy, active

lives, the NPPF, which seeks a high standard of amenity for existing and future users, and the provisions of the NDSS.

Living conditions - neighbouring residents

16. The Council are concerned that the development has resulted in an increase in noise and disturbance which is having an adverse effect upon health, the environment and general amenities of the area. This is due to the increased comings and goings and a change in the pattern of movements inside and outside the premises.
17. There can be little doubt that the conversion to four flats has increased the density of occupation of the appeal site. It is also undoubtedly the case that four separate households will produce additional comings and goings and general activity comparative to when No 19 was in use as a single dwelling. I note that the planning officer's report refers to the potential for noise and disturbance for other residents. However, little specific evidence is given as to which residents have been disturbed, and to what extent.
18. To the front and rear, there are gaps between the appeal site and what appear to be the nearest residential dwellings. Although there is a property immediately adjoining No 19 to the north, the main entrance to the flats is on the south elevation. The location of the entrance away from the surrounding buildings would seem likely to reduce the impact of the comings and goings on the residents in the vicinity. The site plan attached to the notice shows that to the south of No 19 are non-residential uses including a games court and a community centre, where the impact on users will be minimal.
19. I have been directed to an appeal decision (Ref: APP/G5750/C/11/2157211) at 175 Burges Road, which also refers to 'potential' harm, and a lack of complaints, as is the case here. However, I cannot be certain that the circumstances of that appeal provide a direct parallel to the case before me, which limits the weight I can afford it.
20. In the absence of compelling evidence to the contrary, I conclude that there is no material harm to the living conditions of neighbours arising from the development. As a result, there is no conflict with LP Policies SP2, which promotes healthy neighbourhoods, SP3, insofar as it promotes safe, sociable places, SP8, which seeks to ensure neighbourly development, London Plan Policy 7.15, insofar as it seeks to avoid significant adverse noise impacts, or the NPPF.

Other Matters

21. The appellant argues that the external fabric of the building has been cleaned and repaired, thus contributing to the street scene. However, this could have been achieved independently of the appeal scheme, and so carries little weight.
22. A substantial financial investment has been made at the property, and the revenue from flats comprises the appellant's income, future pension, and support for his family. Nonetheless, these are private benefits that do not outweigh the harm identified above.
23. The flats meet all health and safety and fire regulation requirements, but this is a requirement of all new development, and so it is neutral in my consideration.

24. The appeal scheme may well generate more Council Tax than would a single dwelling at No 19. However, this factor has not led me to a different conclusion.

Conclusion

25. For the reasons above, the appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR